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Written statement* submitted by the Amnesty International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[09 September 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Time for Sri Lanka to act on justice, accountability and the protection of human rights

With parliamentary elections over and a new government in place, it is time for Sri Lanka to make good on its promises to account for alleged crimes under international law and build the domestic culture of human rights necessary to prevent the recurrence of past violations. The legacy of impunity in Sri Lanka is daunting and stretches back decades. Alleged war crimes committed during the long armed conflict, as well as enforced disappearances, extrajudicial executions and torture that continued after the fighting ended have never been effectively investigated.

If a process of truth, justice, reparation and non-recurrence is to take root, an essential step must be broad and meaningful consultation with representatives of civil society throughout the country, notably the victims of human rights abuses and violations and surviving family members to determine what they need and expect from an accountability process.[1] Their active and informed participation in its design is essential to ensure that measures taken are meaningful, to gain their confidence to participate in the processes, and to defend accountability efforts against forces who may be intent on preventing the exposure of truth and accountability of perpetrators.

The Government must also act immediately in other areas to deliver on its commitment to end impunity and protect human rights, including by ensuring the conclusion of prosecutions and bringing about legal and institutional reform, including criminalization of enforced disappearances, legal recognition of command responsibility and repeal of the Prevention of Terrorism Act (PTA).

Accountability and Ending Impunity:

According to credible eyewitness testimony, information collected by UN bodies and non-governmental organizations, government forces and the Liberation Tigers of Tamil Eelam (LTTE) committed war crimes and crimes against humanity in the final phase of the armed conflict that ended in May 2009. Sri Lankan Army artillery repeatedly hit government-designated civilian "no fire zones" and hospitals, killing medical workers and civilians who appeared to be used as human shields by the LTTE. The LTTE forcibly recruited and deployed child soldiers and reportedly shot people trying to escape the conflict area. Sri Lankan Army personnel are alleged to have killed and forcibly disappeared civilians and LTTE cadres who had surrendered. Sexual violence was reported against both male and female detainees, including individuals who surrendered to the army in 2009. Impunity for these and other crimes under international law led the Human Rights Council (HRC) in March 2014 to request the Office of the High Commissioner for Human Rights to "undertake a comprehensive investigation into alleged serious violations and abuses of human rights and related crimes by both parties...."

Despite official promises to take measures to ensure accountability, impunity has also persisted for high profile cases such as the January 2006 extrajudicial executions of five students in Trincomalee by Sri Lankan security personnel and the killing of 17 aid workers with Action Contre La Faim in Mutttur in August 2006. The January 2009 murder of newspaper editor Lasantha Wickrematunge; and the disappearances of political activists Lalith Weeraraj and Kugan Muruganandan in Jaffna in 2011 have not been promptly, thoroughly and effectively investigated by independent and impartial authorities. The arrests in August of army personnel and affiliates for questioning in connection with the 2010 disappearance of dissident cartoonist Prageeth Eknaligoda were long overdue.

In March, Foreign Minister Mangala Samaraweera told the HRC this Council that his government had initiated discussions aimed at bringing Sri Lanka's human rights regime in line with international standards, including by

[1] See also the observations of the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, at the conclusion of his 2015 visit to Sri Lanka: http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15820&LangID=E, accessed 24 August 2015.

implementing recommendations of its Lessons Learnt and Reconciliation Commission (LLRC) and other past Presidential Commissions of Inquiry. He noted that this included "examining incidents identified by these Commissions as serious violations of human rights warranting further investigations and a criminal justice response."[2] Despite numerous domestic and international calls to do so, Sri Lanka's former government never made public the report of the Commission of Inquiry that investigated the Trincomalee and Muttur killings. The current government should do so immediately.

The former government also refused to cooperate with the OHCHR Investigation on Sri Lanka (OISL) and ignored requests for visits by key UN Special Procedures. Following the presidential elections in January 2015, the new government did not issue an invitation to OISL investigators to visit Sri Lanka either, but President Sirisena did say he would take the opinions of UN experts into account in establishing a domestic inquiry,[3] and issued invitations to UN Special Procedures. The UN Special Rapporteur on Truth, Justice, Reparations and Non-recurrence visited Sri Lanka in late March.

Unfortunately, momentum slowed after parliamentary elections were called in June. Human rights concerns no longer featured in official statements and a critically important visit by the UN Working Group on Enforced and Involuntary Disappearances (UNWGEID) was postponed until after the election. With the parliamentary elections completed it is time to commit to a transparent and consultative process of legal reform and accountability with seriousness and urgency.

Minister Samaraweera told the Human Rights Council in March 2015 that the content of the OISL report could be "taken into account by domestic investigative and judicial mechanisms which we are in the process of setting up."[4] He said that the Government of Sri Lanka had already begun discussions about the nature of these mechanisms, including necessary amendments to existing laws.

Close International attention, technical support and monitoring of this process remains essential, and Sri Lanka must accept and facilitate this involvement. Sri Lanka's justice system has been ineffective in investigating and prosecuting human rights violations and crimes under international law. Its legislation falls short of the high standards that should be applied in prosecuting such crimes, including with regard to principles of command responsibility. The effectiveness of national victim and witness protection mechanisms remains a concern. Sri Lanka will require international assistance and expertise to address these challenges promptly and effectively. Domestic investigations can only deliver justice if they are sufficiently resourced, can operate independently and are backed by necessary legislation and political will to ensure that where admissible evidence exists, it leads to the prosecution of those suspected of the crimes, regardless of their rank or status. This includes military and civilian superiors who knew or should have known about the commission of crimes under international law and did not take measures to prevent them or punish those responsible.

Amnesty International urges the Human Rights Council to:

- Adopt a resolution supporting the implementation of OISL's recommendations aimed at ending impunity, accounting for the past and reforming systems, and ensuring ongoing HRC engagement including by monitoring the implementation of the OISL report and the human rights situation in Sri Lanka, and providing for regular updates;

- Offer international expertise dedicated to ensuring that allegations identified by OISL of crimes under international law by Sri Lankan government forces, allied armed groups or by the LTTE, are promptly, thoroughly and effectively investigated and that those suspected of committing a crime are prosecuted in genuine proceedings that fully conform to international standards for fair trial;

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[2] http://www.mea.gov.lk/index.php/en/media/media-releases/5978-foreign-minister-addresses-high-level-segment-of-hrc-in-geneva, accessed 4 August 2015.

[3] BBC News, 12 March 2015, http://www.bbc.com/news/world-asia-31844796, accessed 5 August 2015.

[4] See footnote 2 above.

- Offer international expertise dedicated to ensuring that victims of crimes under international law and human rights violations and abuses are provided with other effective remedies, including full reparation and truth.

Amnesty International urges the Government of Sri Lanka to:

- Initiate wide reaching and meaningful public consultation, including with victims and their families, civil society and other stakeholders to understand their needs and expectations regarding truth, justice, full reparation including guarantees of non-recurrence and ensure their full participation in any accountability process;
- Review existing legislation and undertake legal and procedural reforms necessary to investigate and prosecute persons suspected of committing crimes under international law, in accordance with international standards while respecting the rights of the accused, victims and witnesses. This should include amending the Penal Code to include the crime of enforced disappearances and the international legal principle of command responsibility;
- Repeal the Prevention of Terrorism Act and stop using the law until it is repealed.
- Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Rome Statute of the International Criminal Court;
- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance;
- Cooperate fully with OHCHR and relevant UN Special Procedures;
- Ensure that all allegations of crimes under international law are fully investigated and, where sufficient admissible evidence exists, those suspected of the crimes are prosecuted in genuine proceedings before independent and impartial courts that comply with international standards for fair trial;
- Ensure that the truth is established regarding crimes under international law, including the fate and whereabouts of disappeared persons, and that victims are provided with full and effective reparation to address the harm they have suffered.

Amnesty International urges HRC Members and observer states to:

- Support the measures recommended above to the HRC;
- Offer support for and urge Sri Lanka to accept international cooperation and expertise to end impunity;
- Ensure that assistance provided emphasizes the centrality of victims and their special status in the design and implementation of mechanisms to deliver truth, justice, reparation and guarantees of non-recurrence of violations.